IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 26TH SEPTEMBER 2007 / 4TH ASWINA 1929

CRL.A.No. 258 of 2000()

CC.213/1997 of JUDL.MAGISTRATE OF FIRST CLASS-II, KOTTARAKKARA
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APPELLANT/COMPLLAINANT:

B.VIKRAMAN PILLAI, SECRETARY,
SERVICE CO-OPERATIVE BANK LTD.NO.4171,
VELIYAM.

BY ADV. SRI.K.A.SALIL NARAYANAN

RESPONDENTS/ACCUSED & STATE OF KERALA:
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1. **K.B.SULOCHANA AMMA,**
   PROPRIETOR, R.S.COCONUT PROCESSING UNIT,
   PERUMAN, KOLLAM.

2. **STATE OF KERALA, REPRESENTED BY**
   PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. AMJAD ALI
ADV. SRI.V.N.ACHUTHA KURUP (SR.)
SRI.B.S.SWATHY KUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 26/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R.UDAYABHANU,J

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Crl.Appeal No.258 of 2000

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Dated this the 26th day of September 2007

JUDGMENT

The appellant herein is the complainant in C.C.213/1997 who initiated proceedings under Section 138 of the Negotiable Instruments Act. The case of the complainant is that the accused having copra transaction with the complainant society, an amount of Rs.1,15,000/- was due from the accused in connection with the said transaction, for which she issued the impugned cheque putting date 4.8.96. When the cheque was presented for collection, it was returned dishonoured by noting "funds insufficient".

2. The evidence adduced in the matter consisted of the testimony of PWs 1 and 2 and Exts.P1 to P10.

PW1 is the complainant/secretary of the bank. He has testified as to the transaction, of issuance of cheque, dishonour of the same and has also proved documents produced including Ext.P7 minutes book of the Society/Bank. As per the decision of the managing committee of the bank, it is noted that impugned cheque which is in custody of the bank which has been obtained

by the previous secretary has been presented and the same has been dishonoured and decided that the secretary/complainant is authorised to take further proceedings in the matter. It is mentioned in Ext.P7(a) decision that a sum of Rs.2,83,621/- is due from the previous secretary and the previous secretary has obtained the impugned cheque. It is evidenced that the previous secretary was suspended and subsequently he died. As stated above, it is the version in the minutes book that the impugned cheque was collected by the previous secretary. But PW1 has testified that when he demanded the amount, the accused came to the bank on 4.7.1996 and issued a cheque dated 4.8.1996. He was admitted in the cross examination that the cheque was given to him by the accused in response to his letter. The defence version suggested to PW1 in the cross examination as well as in Ext.P8 reply notice is that the previous secretary of the bank had some financial problems and through the husband of the accused, she issued the cheque just to save him at the time. It is also admitted by PW1 that there are Advance register and receipt issued by the accused but the same was not produced

which is taken note of by the court below. I find that evidence of PW1 as to the issuance of the impugned cheque is contradictory to the version in Ext.P7(a) decision in the minutes book that the cheque was in the custody of bank as collected by the previous secretary. The version of PW1 is totally at variance with Ext.P7 (a) decision. Although the defence version that the accused only helped the previous secretary by giving blank cheque as hard to believe in view of the contradictions in the prosecution evidence, I find that no interference is called for in exercise of the appellate jurisdiction against acquittal. The Crl. Appeal is dismissed.

K.R.UDAYABHANU, JUDGE

dvs